

OR CZARA Ag MM comments

Supports disapproval 54, 55, 58, 60, 65, 83, 15, 19, 23, 28, 44, 47, 49, 51

Against disapproval 64, 66, 68, 71 (of ag MMs), 81, 84 (of ag MMs)

Unclear 73, 78, 80, 12, 39, 72, 74

For/Against mischaracterized:

71 –Unclear. Should be against, ag only.

73—Against. Should be unclear.

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Pesticides 54, 55, 58, 71, 80 (monitoring/reporting for pesticides),

No pesticide mgmt measures are in use in ag. lands.(28-D)

The state still does not consider pesticides as pollutants, but considers streamside plantings to be sufficient to filter anything including pesticides.(72-A)

General comments

54 – Pesticides, with many citations. Buffers needed on non-fish bearing streams

55 – Agree with all ag concerns listed in 12/13 letter. Ag enforcement – only most egregious cases subject to enforcement. ODA protector of ag. All EPA/NOAA concerns about ag correct. Focus on impaired waters rather than protection. Waits until TMDL developed. ODA does not track implementation and effectiveness of AWQMP. Authority, but no political will to address legacy issues.

58 – Mostly forestry. Only reference need for wider ag buffers.

60—CAFOs not adequately regulated. Enforcement is complaint driven, with no follow-up. AWQMA plans are voluntary. No backup enforcement authority, as required.

64, 66, 68—Producers are doing good things. Counterproductive to take away funding. MM have to be economically achievable. No data to support claim that ag problems are widespread.

65-OR Water Basin Plans and regulations are inadequate to protect minimal stream flows and sensitive and endangered species, therefore don't meet ag MMs.

71-Meets or exceeds CZARA for ag. MMs only need to be economically achievable. No additional MM needed (no designated critical areas or new ag land uses that need new MMs). Ag in compliance with AWQMP. No data on ag contributing to WQ problem. If proposal disapproved, will sue. ODA has authority to ensure compliance.

73-Need more data and analysis before establishing program goals—effectiveness data, more monitoring. Inadequate restoration funding. Science and technology can quantify restoration impacts. WQ trading shouldn't be entangled with NPS control.

78-Ag program inadequate. 100% compliance will not meet WQS or TMDLs. Insufficient rules and insufficient enforcement of rules. No implementation plan.

80—Ag portion Need compliance strategy to ensure that area plans are meeting TMDL load allocation and WQS. Improve WQ monitoring and publish results for public review annually. Link SB 1010 process at DOA to TMDLs. SB 1010 should require active restoration to meet TMDL.

81—Already complying with CZARA. BMPs already in place.

83—Riparian buffer rules insufficient, logging of unstable slopes and Type N streams, failed to control runoff from cattle operations. (Includes photos of riparian areas.)

84 –Meets Ag MMs through Area Plans—outcome based approach allowable under CZARA, encourages voluntary efforts. No data on widespread WQ impairments from ag, only assertions. CZARA doesn't require specific practices, only the outcome. Not required to address legacy issues.

39-A: Need to consider all the good work cattlemen have done to protect water quality - in his area, they do all they can to control any contamination in OR streams. Commentor is cattleman and fisherman that fences his creek and observes that there are steelhead and salmon that run up it.

47-B: Important for state to include MM for agriculture necessary to achieve and maintain WQS.

74-A: Loss of funding would be a significant blow and the real tragedy of a disapproval.

Focus limited to impaired areas, no protection

- OR Dept of Ag refuses to require protective measures until WQS violations are detected by OR monitoring and TMDL developed. (55)
- Requirements for impaired areas also apply to unimpaired areas. (84)

Implementation

- ODA does not track implementation and effectiveness of area plans. (55)
- ODA only uses DEQ WQ data, which is limited. (55)
- Inadequate inspections, monitoring, knowledge, resources, complaint investigation for CAFOs. (60)
- ODA ineffective in improving riparian condition (2003-2008—cited ODA report using of air photos to track riparian areas. (55)
- No implementation plan. (78)
- OR has failed to control polluted runoff from erosion and sedimentation from agricultural lands and livestock destruction of riparian areas.(49-G)

Monitoring

- Monitoring showed little improvement. Now monitoring scheme changing (55)
- Insufficient monitoring. (55)
- New ODA monitoring process developed within the last year (no analysis of process) (55)
- OR Cattlemen's Assc. is gathering data and developing a monitoring guideline to establish a baseline and "affirm" good practices. (64, 66, 68)

Economic Achievability

- States are not required to implement practices that are not economically achievable (64, 66, 68, 71)

Ag Practices

- No data from EPA/NOAA to demonstrate that WQ impairments are widespread. (64, 66, 68, 71)
- Land owners have done a lot of good things, with examples. (64, 66, 68, 71, 81)

- AWQMP directly references and implements (g) guidance (71)
- CZARA does not require MMs that will not result in load reductions. (71)
- Insufficient rules to meet WQS or TMDLs. (78)
- Areas where program improvement needed that could actually work to control polluted runoff from logging would be protection of riparian areas for small and medium streams (fish and non-fish bearing), including sufficient riparian buffers for application of pesticides along non-fish streams; treating old logging roads often built on fill that are leaching sediment, protection of high-risk landslide areas from cuts (44-D)
- Commenter has not been provided any assurance or evidence from state and local officials that they intend to meet the requirements regarding credible management practices for determining and enforcing required water quality standards.(72-C)
-

Additional Management Measures

- Not needed because 1) OR's program identifies ag land uses that contribute significantly to WQ problems, 2) EPA does not find that ag is an expanding source of loadings, 3) EPA/NOAA do not provide data that ag is causing significant WQ problems. (71)

Adequacy of AWQMP

- Meets CZARA—must approve ag MMs
 - OR ODA ID ag land uses, if any, that contribute significantly to WQ problems
 - EPA does not find that ag is an expanding source of loading
 - Agencies provide no data that ag is causing significant pollution
- AWQMP does not meet CZARA (60)
- Fails to adequately regulate CAFOs. ODA de facto CAFO regulator, but not de jure. (60)
- Current ag NPS controls are insufficient to protect WQ and designated uses. (60, 78)
- NPS Impacts from ag must be addressed (13-C)
- Also necessary for state to include ag MM that are necessary for achieving and maintaining WQS. (23-B)
- No pesticide mgmt measures are in use in ag. lands.(28-D)
- State needs to adopt additional, enforceable management measures most importantly in agricultural and forested lands (44-C)
- Oregon's biggest lack in management measures to help us meet water quality standards to protect our Oregon coast coho, amphibians, and drinking water and other uses may be Oregon's lack of agricultural practices. Legacy areas where there is only a buffer of blackberries along our rivers and streams do not need to be planted, cows trample our stream banks and don't need to be fenced out are common sights. Animal waste runs off through eroding fields into our streams.(44-F)

Enforcement/Compliance

- Enforcement is limited only to largest, most egregious cases and may not produce water quality improvements (55)
- ODA has enforcement authority for watershed basin rules. (71, 84)
- AWQMP is successful specifically because rarely uses enforcement, but instead works with landowners to get voluntary compliance. (71)

- Unclear what CAFO enforcement has been taken and any resulting improvements. Complaint driven, ODA often unresponsive. Too few inspectors. (60)
- AWQMA plans are voluntary. No back-up mechanism for implementation of ag. ". (60, 78)
- ODA enforces rules, but works with land owners before enforcement. (64, 66, 68)
- Most if not all ag landowners are in compliance. (71)
- Compliance procedure in place both voluntary and regulatory. (71)
- Area rules only enforceable part of program. AWQMP does not ensure landowner compliance. (78)
- New plan to assess ag landowner compliance will take far too long with current resources. (78)
- There has never been meaningful oversight of Tillamook Dairy Mngt Industry. Voluntary compliance is not working, OR DEQ has not worked to manage the dairy farms waste management practices. (19-D)

Buffer requirements

- ODA's area plans are general and do not include specific riparian buffer requirements. (55)
- 2009 and onward Mid Coast Basin Ag Area Advisory Committee rejected all specific buffer proposals (55)
- Need wider stream buffers for ag operations to make watersheds more resilient due to large storms (climate change) (58)
- Need buffer on Type N, non-fish bearing streams (54)
- ODA enforces buffer rules that are site specific, address WQ, and economically achievable. (64, 66, 68)
- CZARA does not require riparian buffers on ag land. (71)

AWQMPs do not address legacy issues

- Buffers—some consistent of blackberry vines/reed canary grass which do not provide riparian functions (pollutant filtration, bank stabilization, shade) ODA has the authority, but butt not the political will to deal with this issue. (55)
- ODA area plans do not address "legacy" issues created wholly in the past.
- NOAA/EPA need to include in future rationales and consider when evaluating future state submissions: interconnected habitat and water quality factors and legacy issues, beaver management, watershed and riparian factors influencing water quality, novel human chemical contaminants, over-allocation of water, urban runoff from older as well as newer developments, and little consideration given to the importance of maintaining groundwater flow connection(s), and climate changes (15-F)
- ODA's poor past and ongoing efforts at regulating agricultural and livestock practices that harm salmon and other biota are not acknowledged in analyses. (15-H)

Stream Flows

- Water Use Basin Program does not legally or practically ensure that WQ and habitat will not be impaired, contrary to NOAA/EPA proposed findings. (all 65)
 - "Minimum perennial streamflows" (MPS) in BP have no real meaning since 1) MPS have no impact on water use rights established before MPS and 2) MP flows have a lower preference than other uses. OAR 690-076-0015
 - MPS held by OWRD are not protected in practice.

- BMPs have limited scope and are very dated.

Legal

- AWQMP meets the (g) guidance, no additional MMs necessary. (71)
- States are not required to implement practices that are not economically achievable or do not make a “meaningful difference to reducing polluted runoff into a waterway”. (71)

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